IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1990 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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JASHBHAI DAHYABHAI PATEL

Versus

MOTIBHAI AMBALAL PATEL

Appearance:

1. Special Civil Application No. 1990 of 2001

MR MUKESH R SHAH for Petitioner No. 1

MR JAYESH M PATEL for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 24/09/2001

ORAL JUDGEMENT

#. Heard Mr.R.N.Shah, learned advocate appearing on behalf of the petitioner and Mr.Jayesh Patel, learned advocate appearing on behalf of the respondent Nos.1 & 2.

RULE. Mr.Jayesh Patel, learned advocate appearing on behalf of the respondents waives service of Rule on behalf of the respondent Nos.1 & 2.

#. The brief facts giving rise to the present petition are that the petitioner has filed application under Section 70[b] of the Bombay Tenancy and Agricultural Lands Act vide Tenancy Case No.94 / 1996 for declaring him as tenant of the suit land and deemed purchaser of the said land under the said Act. The dispute is with regard to 0 Hector 52 Gunthas of land situate on the western side of block No.131 which is admeasuring 1 Hector - 04 Are - 21 Gunthas. That the said land is situated in the sim of village Porda, Taluka Mahuda, District Kheda. It is the case of the petitioner that in a proceeding under Section 70[b], an application was filed by the petitioner for injunction restraining the respondent No.1 from disturbing peaceful possession by invoking provision of Section 70[nb]. That mutation entry in the revenue record in village Form No.VII / XII of 1993-94 was also filed showing possession of the petitioner in the column of Khed-huk and also payment receipt of the land revenue. On 18th June, 1999 the Mamlatdar in the aforesaid Tenancy Case No.94/ 99 in a proceeding under Section 70 b, interim relief as prayed for was granted in favour of the petitioner and the said order was challenged by the respondent No.1 before the Deputy Collector, Kheda, who allowed the appeal and set aside the order of interim injunction granted in favour of the petitioner by order dated 23rd August, 1999. Aggrieved by the aforesaid order, the petitioner preferred revision application by way of filing revision application No.377 / 2000 before the Gujarat Revenue Tribunal challenging the order of Deputy Collector on 16th October, 2000 in Tenancy Appeal No.48 / 1999 but the Gujarat Revenue Tribunal by order dated 19th December, 2000 in rejecting the revision application filed by the petitioner. This is that order against which the present petition is filed.

#. I have considered the submissions of Mr.R.N. Shah, learned advocate for the petitioner and Mr.Jayesh Patel, learned advocate appearing on behalf of the respondents. It is necessary to note that the proceeding which has been filed by the petitioner under Section 70[b] is pending with the Mamlatdar and ALT, Nadiad, wherein the interim relief has been granted initially in favour of the petitioner and the said order has been challenged by the respondent No.1 before the Deputy Collector. The Deputy Collector has allowed the appeal and thereafter the petitioner has approached the revisional authority,

wherein the revision application is pending. However, the request of the petitioner for granting stay during the pendency of the revision application has been rejected by order dated 19th December, 2000. Learned advocate Mr.R.N.Shah submitted that interim relief has not been granted by the Tribunal only on the ground that there was injunction issued by the Civil Court by order dated 28th July, 1999 in favour of the petitioner. Learned advocate Mr.R.N.Shah has submitted that in civil proceedings, the petitioner was not party and order passed by the Civil Court has been placed on record by the respondent at pg.57, wherein the civil court has granted interim relief against the respondent of the civil suit directing to not to transfer the disputed land in question and not to give possession of the disputed land in question by order dated 10th August, 1999. But fact remains that in said proceedings, the petitioner was not the party at all, therefore, this interim order will not protect the possession of the petitioner. However, Mr.Shah, learned advocate for the petitioner has also pointed out from pg.68 that the suit being No.305 / 99, wherein Para-2 of the Exh.5 application, it is clearly mentioned that western side admeasuring 52 gunthas is in the possession of the tenant Jasbhai Dahyabhai. This fact has been disclosed in Exh.5 application. Therefore, considering this fact, the revisional authority while rejecting the prayer of interim relief by order dated 19th December, 2000 kept in mind the order passed by the civil court but admittedly, in the civil proceedings, the present petitioner was not the party and therefore, naturally his right of possession is not protected by order of the civil court. Therefore, the revisional authority has committed error in rejecting the said application filed by the petitioner. In view of above discussion, the order passed by the revisional authority in revision application No.377 / 2000 dated 19th December, 2000 is hereby quashed and set aside with direction to the Gujarat Revenue Tribunal to decide the revision application No.377 / 2000 within period of three months from the date of receiving the certified copy of this order. However, in the meantime, status quo in respect of the disputed land in question is required to be maintained by the respondents till the decision is arrived at by the Tribunal. In light of above observations and directions, the present petition is allowed. Rule is made absolute to the extent indicated hereinabove. No order as to costs.

Date : 24-9-2001 [H.K.Rathod, J.]

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